AB 1785 Bill Analysis

Assembly Bill 1785 (Frommer)
Lobbyist: Political Consulting Services

Version: As Introduced, July 15, 2003
Status: May be heard on or after August 15
Urgency measure

Summary

This bill would prohibit a lobbyist or lobbying firm that has, currently or within the previous two years, contracted to provide political consulting services to a state legislator, from contacting that legislator to influence legislative action. The bill defines "political consulting services" to mean "services with respect to a campaign for elective office." As an urgency statute, the bill would become effective upon the Governor's signature.

Background

Like AB 1784 (Wolk), this bill was precipitated by a series of incidents involving a successful Democratic campaign consultant who is also a registered lobbyist. Newspaper articles reported that the lobbyist threatened members of the Assembly with retribution when next they face re-election unless they voted for a bill sponsored by one of the lobbyist's clients.

The phenomenon of registered lobbyists also providing political consulting services appears to be limited to the individual featured in the above-reference newspaper accounts. However, since there is currently no statutory definition of "political consulting services," or "campaign consultant," nor any registration requirement for the latter occupation, it is difficult to determine whether other individuals serve as both consultants and lobbyists.

According to the author's staff, one objective behind this measure is to discourage the proliferation of lobbying firms that also offer political consulting services. The concern is that, in order to remain competitive in legislative advocacy, lobbying firms will feel the need to create consulting relationships, and the kind of undue influence on legislators that is now somewhat limited will become more widespread.

Staff Analysis

Commission staff has raised the following concerns:

Applying the prohibition on "contact for the purpose of influencing" in the context of committee testimony, letter writing, and other common, but more attenuated efforts at influencing legislative action, may be unworkable.

The proposed definition of "political consulting services" should be amended to "*professional* services with respect to a campaign for elective office," thereby omitting catering, equipment rental, etc. Another solution here would be to employ the language from regulation 18225.7, "professional services related to campaign or fundraising strategy."

The author may wish to consider limiting the prohibition on seeking to influence to that activity for which the lobbyist is being compensated. This would exclude from the statute's proscriptions communications arising only out of the campaign consulting relationship (i.e., how to vote on general legislative issues given the member's district, etc.).

Finally, staff suggests that the bill be amended to specify whether the "contact" prohibited by the bill includes communication to and through agents. For example, whether the prohibition applies to non-registered associates of the consultant-lobbyist, and whether it applies in communicating with staff to a client legislator.

These questions have been shared with the author's office, and may be addressed through amendments.

In addition, the Commission may want to request language to deal with costs arising from litigation, in the event this enactment is challenged. The prohibition on lobbyist contributions enacted by Proposition 34 (Government Code section 85702), for instance, was unsuccessfully challenged by a lobbyist trade association in *Institute of Governmental Advocates v. FPPC,* 164 F.Supp. 2d 1183 (E.D. Calif 2001). While the Attorney General's Office is available to defend the Commission at no charge in these actions, if plaintiffs prevail, costs and attorneys fees would be borne by our agency. For this reason, the Commission may wish to request that each of these measures be amended to include the following language:

> If this section is successfully challenged, any attorney's fees and costs shall be paid from the General Fund and the Commission's budget shall not be reduced accordingly.

In the alternative, this language could be broadened to apply to any challenge to a provision of the Political Reform Act.

Unfunded Costs
Each time a substantive new provision is added to the Political Reform Act, telephone and written advice requests and enforcement workload increase. It is estimated that these two companion measures will give rise to approximately $50,000 in costs for regulatory implementation, telephone and written advice, and enforcement workload. The Commission is urged to seek reimbursement for these costs, as it is this layering of unfunded new programs that forces the agency to prioritize advice and enforcement workload and, ultimately, to abandon some workload.

Recommendation: Support if amended to include language related to lawsuits.

This bill would further the purposes of the Act—in particular, subdivision (b) of section 81002:

> The activities of lobbyists should be regulated and their finances disclosed *in order that improper influences will not be directed at public officials.* [Emphasis added.]

Staff recommends supporting AB 1785 if the bill is amended to shift attorneys' fees and costs awarded successful litigants to the General Fund.